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Montana's Agenda

ISSUES SHAPING OUR STATE



The Medical Marijuana Mess

By Fred Van Valkenburg*

The Problem and Some Statistics

In November 2004, Montana voters passed an initiative (I-148) by a 62 percent margin, authorizing the use of medical marijuana in our state. Montana is currently one of 15 states permitting the use of medical marijuana. The Montana Medical Marijuana Act (Title 50, Chapter 46 of the Montana Code Annotated) is administered by the Department of Public Health and Human Services (DPHHS). It licenses patients to grow a maximum of six marijuana plants and have in their possession up to one ounce of usable marijuana. The patient may also select a caregiver, a person who may grow six marijuana plants per patient and possess one ounce of useable marijuana for each patient. Currently, caregivers can have an unlimited number of patients and may receive reasonable compensation for assisting with a qualifying patient's medical use of marijuana. In addition, the only legal qualifications required to be a caregiver are that the caregiver must be at least 18 years of age and have agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. One of the uncertainties in interpretation of the Act is whether a caregiver may convert the marijuana to a form such as butter or cook it into a product such as brownies. The Montana Medical Marijuana Act has remained largely unchanged since its adoption by the voters.

Between 2004 and 2008, a total of approximately 700 patients and 230 caregivers registered with DPHHS. After the appointment of a new U.S. Attorney General in 2009, the U.S. Department of Justice issued guidelines to federal prosecutors recommending against the prosecution of patients using medical cannabis products in accordance with state laws.

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Subsequently, by September of 2010, with little or no fear of federal prosecution, the number of medical marijuana patients in Montana had mushroomed to approximately 23,600 and the state had over 4,460 caregivers (See DPHHS table below). Faced with this steady increase in the number of patients and caregivers, the Montana Legislature's Children, Families, Health, and Human Services Interim Committee in early 2010 decided to review a number of issues that had arisen regarding the state's Medical Marijuana Act.

History of Qualifying Patients, Caregivers, and Doctors

	Patients	Caregivers	Doctors
March 2005	86	35	69
March 2006	189	67	100
March 2007	319	116	118
March 2008	736	233	150
March 2009	2,074	640	186
March 2010	12,081	2,797	295
June 2010	19,635	3,940	322
September 2010	23,613	4,463	338

Legislators' Ideas for Reform

A subcommittee made up of Representatives Diane Sands (D-Missoula), Gary McLaren (R-Victor), Penny Morgan (R-Billings) and Senator Trudy Schmidt (D-Great Falls) met three times over the summer of 2010 and considered at least 20 staff reports or position papers by interested parties, over 200 written comments from the public, and testimony from dozens of witnesses. In the course of that period, the subcommittee learned that approximately 28 percent of the people who had registered for medical marijuana cards were under the age of 30, and 92 percent were under the age of 60. In addition, DPHHS reported that fewer than 3 percent of cardholders cited cancer, glaucoma, or HIV (AIDS) as their qualifying medical debilitating condition. After hearing such reports and testimony, the Committee was very concerned about the rapid growth of Montanans seeking medical marijuana cards in the previous two years and the apparent use of medical marijuana by persons without life-threatening conditions. Further, law enforcement authorities, local government officials, and even medical marijuana advocates told the committee that significant changes in the law were needed. In response, the subcommittee recommended a number of changes to Montana's law and a committee staffer has summarized those changes as follows:

- establish a regulatory system that will license and inspect individuals and businesses that grow and provide medical marijuana;
- allow the creation of medical marijuana dispensaries;
- place a ceiling on the amount of marijuana that may be dispensed to a person each month;
- require people to be Montana residents in order to use medical marijuana;
- spell out the standard of care physicians are expected to meet in certifying that a patient qualifies for medical marijuana use;
- prohibit any financial relationships between physicians and the businesses or individuals who provide medical marijuana;
- prohibit use of medical marijuana in public; and
- repeal an affirmative legal defense available to people who may be in possession of marijuana without a registry card or in amounts greater than allowed by law.

The full committee then reviewed and took additional comment on three bill drafts (LC MM01, LC MM02 and LC MM03) related to medical marijuana and voted (7-1) to propose all three bills containing the above changes to the 2011 Montana Legislature.

In addition to the work of the interim committee, at least two members of the Montana Legislature plan to introduce bills on the subject of medical marijuana in the 2011 session. Senator Jim Shockley (R-Victor) will offer a complete repeal of the voter-passed initiative. Senator Dave Lewis (D-Helena) plans to introduce a bill that would establish a licensing system for growers and a distribution system of useable marijuana to patients, which is likely to look much like the current system for regulating liquor or gambling in Montana.

Other Montana Voices

Tom Daubert, a Helena-area marijuana patient caregiver who is also the head of Patients and Families United (a lobbying group representing medical marijuana patients) and one of the people who had a significant role in the drafting and passage of I-148, has publicly voiced his interest in amendments to the marijuana law to put the regulation of marijuana growers under the control of the Department of Agriculture. It is likely that the group he leads will find a sponsor to offer those proposed amendments. Jason Christ, the executive director of the Montana Caregivers Network, has said that he doesn't

“think we should be making it harder for people to get medical marijuana. We should be making it easier.” Christ’s statement is important because he, more than anyone in Montana, has become the public face of medical marijuana users in the state. Between 2009 and 2010, Christ put on “traveling clinics” in numerous Montana cities where he helped thousands of people sign up for medical marijuana cards. Christ, who has told a newspaper reporter that his marijuana-related business generated \$1.22 million in its first year (primarily by charging prospective patients \$150 each to connect them with a physician who was likely to give them a recommendation for medical marijuana use), is likely to do everything he can in the coming legislative session to protect his own financial interest in maintaining the status quo. In that regard, veteran observers of the legislature know that, with all the hoops bills must go through, it is a lot easier to kill legislation than to get it passed.

Organizations such as the League of Cities and Towns, the County Attorneys’ Association, law enforcement officials, the Board of Medical Examiners, and mainstream business organizations are likely to weigh in on the subject of medical marijuana during the 2011 legislative session. Zoning regulation by Montana cities and towns, many of which have already adopted moratoriums or very restrictive zoning ordinances, is almost certainly going to be considered. Also to be heard, because medical marijuana now directly affects nearly 30,000 Montanans, are many people and businesses that have come to have a significant economic interest in the business of providing medical marijuana to registered patients. These businesses include caregivers and their employees, consultants such as Jason Christ and his employees, and hardware stores that provide supplies such as hydroponic equipment and lighting fixtures to growers and farmers who have been contracted to grow marijuana for caregivers.

Everyone involved in this issue would be well served to know Montana Governor Brian Schweitzer’s views about medical marijuana before a bill lands on his desk for his signature or veto. In June of 2010, the Governor toured a Missoula medical marijuana clinic and told a newspaper reporter: “I think it’s unrealistic to say to legitimate medical patients that have found benefit from medical marijuana that you can no longer access this. I think we need to tighten up the laws. . . . The business has gotten out ahead of the regulatory environment and we need to build some boundaries.” Interestingly, Schweitzer’s nephew, Frederick Schweitzer, is a licensed medical marijuana caregiver in the Billings area.

Other States’ Approaches

Montana is not alone in allowing its citizens to use medical marijuana. In fact, many of the proposed interim committee changes to Montana law have been drawn from recent changes to Colorado law. Colorado, Maine, New Mexico and Rhode Island have what is commonly referred to as a “dispensary” system in which the state allows medical marijuana to be sold to any registered medical marijuana cardholder through formal business entities licensed by the state. An alternative model, commonly referred to as the “caregiver” system (Montana’s current scheme), usually requires registration of patients and caregivers but has little or no governmental involvement other than vague laws that are difficult for state and local authorities to enforce. To the extent that caregivers are allowed to have multiple patients, such enforcement becomes even more problematic. In response, Alaska, Nevada, New Jersey, Vermont and Washington permit caregivers to have only one patient each. At the opposite end of the spectrum, California, Hawaii, Oregon and Montana place no limit on the number of patients a caregiver may have.

No states that have legalized the use of medical marijuana have subsequently repealed such laws. However, the voters of one state, South Dakota, recently refused to adopt an initiative legalizing medical marijuana. A similar initiative to legalize marijuana in Arizona passed by the narrowest of margins after provisional ballots counted in the ten days after the election reversed a trend and resulted in passage of the measure. California voters, while refusing to legalize marijuana in general, did adopt a measure that substantially taxes the sale of medical marijuana in their state. There’s little doubt that the Montana Legislature will consider proposals either to tax medical marijuana or increase greatly the fees charged for the issuance of patient and caregiver cards in order to finance the enforcement of a more restrictive regulatory system. For that purpose, the interim committee’s bill would require the DPHHS to set fees commensurate with the cost of regulation. It would also appropriate up to \$4 million from that fee revenue to cover the regulation cost in the 2012-13 biennium. Contrast that with the approximately \$500,000 being generated from fees in the current biennium.

Conclusion

Very few people, if any, argue these days that marijuana has no medicinal value – especially for those who suffer from debilitating medical conditions or severe chronic pain. Given the legislative interim committee’s recommendation



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for a more tightly regulated medical marijuana dispensary system and the Governor's apparent endorsement of the need to provide medical marijuana to "legitimate medical patients," it seems likely that a bill amending the Montana Medical Marijuana Act will become law in 2011. However, the path from a bill's introduction to the Governor's desk is always long and winding. The end product is both difficult to predict and may well depend on events yet to occur.

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